

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION**

November 8, 2011

The Rhode Island Ethics Commission held its 16th meeting of 2011 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, November 8, 2011, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Ross Cheit, Chair John M. LaCross

Deborah M. Cerullo SSND, Vice Chair John D. Lynch, Jr.

J. William W. Harsch, Secretary Edward A. Magro

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.

At 9:01 a.m. the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held

on October 18, 2011. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To approve minutes of the Open Session held on October 18, 2011.

ABSTENTIONS: Deborah M. Cerullo; J. William W. Harsch.

The next order of business was advisory opinions. The advisory opinion was based on a draft advisory opinion prepared by the Commission Staff for review by the Commission and was scheduled as an item on the Open Session Agenda for this date. The advisory opinion was that of:

John A. Walsh, Ph.D., a member of the Rhode Island Board of Governors for Higher Education, a state appointed position, requesting an advisory opinion regarding whether he may participate in the Board of Governors' discussion and voting relating to ongoing contract negotiations and approvals of collective bargaining agreements with local bargaining units of the National Education Association of Rhode Island ("NEARI"), given that he is privately employed by NEARI as an Assistant Executive Director/Uniserv.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that he disagreed with the advisory opinion's conclusion that there

was a financial impact on NEARI. In response to Chair Cheit, the Petitioner explained that Uniserv stands for Unified Service, relating to his work as a field representative. The Petitioner confirmed that the dues paid to the local bargaining unit are a fixed amount to be determined democratically by the members of the local bargaining unit. The Petitioner informed that all members of the Board of Governors are appointed at large with the exception of one member coming from the Board of Regents. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Magro, it was

VOTED: To issue an advisory opinion, attached hereto, to John A. Walsh, Ph.D., a member of the Board of Governors for Higher Education.

AYES: Deborah M. Cerullo; John M. LaCross; J. William W. Harsch; Edward A. Magro; Ross Cheit.

NOES: John D. Lynch, Jr.

The advisory opinion was approved by a vote of 5 to 1.

The next order of business was the introduction of a Proposed Amendment to Commission Regulation 36-14-5002, "Additional Circumstances Warranting Recusal." By way of background, Staff Attorney Gramitt informed that this proposed amendment came out of

the deliberations of the Union Regulation Subcommittee last spring, although the changes are not related to the union issues. He stated that the proposed changes to subsection (a) were intended to make the regulation more readable, clear and concise by using terms defined elsewhere in the Code, referring to the recusal provision in R.I. Gen. Laws 36-14-6, and making the language gender neutral. He explained that subsection (a) clarifies the recusal situations arising under R.I. Gen. Laws 36-14-5(a), (d). Commissioner Cerullo inquired as to whether this revision would encompass household members, consistent with Regulation 5004 “Prohibited Activities – Nepotism.” Staff Attorney Gramitt replied that he would add language to Regulation 5002, consistent with Regulation 5004, concerning circumstances when a household member of a public official appears before his or her agency.

Staff Attorney Gramitt informed that the proposed addition of subsection (b), which contains two exceptions, stems from a series of advisory opinions concerning the Coulters, a husband and wife who each held public positions in the same town. Subsection (b)(1) applies in situations where a public official’s business associate, employer, or any person within his or her family appears before him or her solely in an official capacity, as a duly authorized representative of a state or municipal agency. Subsection (b)(2) applies in situations where a public official’s business associate, employer, or any person within his or her family appears at a public forum to offer comment on a matter of general public interest,

provided that all other members of the public have an equal opportunity to comment. Staff Attorney Gramitt added that both subsections (b)(1) & (2) contain a safety valve requiring recusal if there is a personal financial interest in the matter.

Staff Attorney Gramitt summarized the rulemaking process and suggested that it would help to bring to light any potential unintended consequences. Commissioner Harsch suggested that the Commission proceed to rulemaking with the changes suggested by Staff Attorney Gramitt. Commissioner Cerullo asked Staff Attorney Gramitt to include household members in the version submitted for rulemaking. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To direct staff to proceed with rulemaking for Regulation 5002, as discussed at this meeting.

Next, Staff Attorney Gramitt provided the Commissioners with an edited copy of Regulation 5009, "Prohibited Activities – Gifts." He informed that subsections (f) and (g) have been obsolete for the past six years and lead to more questions about whether certain gifts need to be reported. He suggested deleting subsections (f) and (g) for clarification. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Magro, it was unanimously

VOTED: To direct staff to proceed with rulemaking for Regulation

5009, as discussed at this meeting.

Chair Cheit asked Staff Attorney Gramitt to think about whether the Commission should implement a statute of limitations for complaint matters.

At approximately 9:34 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:

a) Motion to approve minutes of Executive Session held on October 18, 2011, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

b) In re: Frank Hyde, Complaint No. NF2011-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

c) In re: Brian G. Coogan, Complaint No. NF2011-8, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

d) In re: Colette J. Matarese, Complaint No. NF2011-9, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

e) In re: Alisa Trainor Fleet, Complaint No. NF2011-10, pursuant to

R.I. Gen. Laws § 42-46-5(a)(2) and (4).

f) In re: Paul H. Martin, Complaint No. NF2011-17, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

g) In re: Nina Pande, Complaint No. NF2011-20, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 9:48 a.m. The next order of business was a motion to seal the minutes of the November 8, 2011 Executive Session. Upon motion made by Commissioner LaCross and duly seconded by Commissioner Magro, it was unanimously

VOTED: To seal the minutes of the November 8, 2011 Executive Session.

Chair Cheit reported that the Commission took the following actions in Executive Session: 1) unanimously voted to approve the minutes of the Executive Session held on October 18, 2011; 2) unanimously found that probable cause exists in the matter of In re: Frank Hyde, Complaint No. NF2011-2; 3) unanimously found that probable cause exists in the matter of In re: Brian G. Coogan, Complaint No. NF2011-8; 4) unanimously found that probable cause exists in the matter of In re: Colette J. Matarese, Complaint No. NF2011-9; 5) unanimously found that probable cause exists in the matter of In re:

Alisa Trainor Fleet, Complaint No. NF2011-10; 6) unanimously found that probable cause exists in the matter of In re: Paul H. Martin, Complaint No. NF2011-17; and 7) unanimously found that probable cause exists in the matter of In re: Nina Pande, Complaint No. NF2011-20.

The next order of business was the receipt of correspondence concerning reconsideration of Advisory Opinion 2009-31. Staff Attorney Gramitt informed that Attorney Nicholas Gorham, on behalf of Edwin P. Luther, asked the Commission to reconsider Advisory Opinion 2009-31 and also to consider a separate issue as to whether Mr. Luther can operate as a pipefitter in Rhode Island. He explained that the Commission does not have a procedure for the reconsideration of an advisory opinion absent the presentation of new facts, although reconsideration is not expressly prohibited. Chair Cheit noted that the advisory opinion was two years old and the reconsideration request presented new arguments rather than new facts. He stated that he was disinclined to reconsider the original advisory opinion. Commissioner Lynch agreed. Chair Cheit advised the Staff to inform Mr. Gorham that Mr. Luther is welcome to submit a request for a new advisory opinion relative to the pipefitter issue.

The next order of business was the Director's Report. Executive Director Willever reported that there are ten complaints and one advisory opinion pending, and that three APRA requests have been fulfilled since the last meeting.

The next matter was New Business. There being no New Business, at 10:01 a.m. upon motion made by Commissioner Magro and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To adjourn.

submitted,

Respectfully

Harsch

J. William W.

Secretary